

July 21, 1999

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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Seattle, Washington 98164  
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**REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL.**

**SUBJECT:** Department of Development and Environmental Services File No. **L98RZ008**  
Proposed Ordinance No. **1999-0101**

**KELLY KAHNE**

Application for Zone Reclassification

**Location:** South of Southeast 208th Street and east of 216th Avenue Southeast (if both were extended). The project site is located approximately 1/2 mile northwest of where State Routes 18 and 169 cross the Cedar River.

**Owner/  
Applicant:** Kelly Kahne  
26333 Southeast Mud Mountain Road  
Enumclaw, WA 98022

**SUMMARY OF RECOMMENDATIONS:**

|  |   |
|--|---|
| Department's Revised Preliminary Recommendation: | Approve                                     |
| Department's Final Recommendation:               | Approve                                     |
| Examiner's Recommended Decision:                 | Approve, subject to pre-effective condition |

**PRELIMINARY MATTERS:**

|                                    |                   |
|------------------------------------|-------------------|
| Application or petition submitted: | November 24, 1998 |
| Complete application:              | December 21, 1998 |

**EXAMINER PROCEEDINGS:**

|                 |  |
|-----------------|--|
| Hearing Opened: | July 8, 1999, at 9:30 AM   |
| Hearing Closed: | July 8, at 10:28 AM  |
|                 | The record remained opened until 4:30 PM, July 9, 1999, for the purpose of receiving a |

preliminary geotechnical engineering study

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES/TOPICS ADDRESSED:**

- Changed circumstances
- Comprehensive Plan policy application
- Reclassification criteria

**SUMMARY:**

Approval of the rezone is recommended, subject to a pre-effective condition that both parcels be subdivided pursuant to an integrated plan in order to assure the availability of sufficient development area unconstrained by slopes and streams.

**FINDINGS, CONCLUSIONS & RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:****1. General Information:**

|                   |  |
|-------------------|--|
| Applicant:        | Kelly Kahne<br>26333 SE Mud Mountain Road<br>Enumclaw, WA 98022  |
| Agent:            | Jim Pirie<br>PO Box 21688<br>Seattle, WA 98111<br>Phone: 206-524-6274  |
| STR:              | NE of the NW of Section 9, Township 25N, Range 6E<br>(Parcels: 0922069152 and 0922069014)  |
| Location:         | South of SE 208 <sup>th</sup> Street and east of 216 <sup>th</sup> Avenue SE (if both were extended). The project site is located approximately ½ mile northwest of where State Routes 18 and 169 cross the Cedar River. (See Attachment A.) |
| Current Zoning:   | RA10 (29.57 ac.)   |
| Requested Zoning: | RA5 (29.57 ac.)  |
| Sewage Disposal:  | On-site  |
| Water Supply:     | Wells  |
| Fire District:    | Maple Valley   |
| School District:  | Tahoma   |

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's revised preliminary report to the King County Hearing Examiner for the July 8, 1999, public hearing are found to be correct and are incorporated herein by reference. The LUSD Staff recommends approval of the application.
3. Kelly Kahne has filed an application to rezone 29.57 acres on a bluff overlooking the confluence of the Cedar River and Peterson Creek from RA 10 to RA 5. The property subject to the rezone application is the easternmost portion of two parcels totaling approximately 50 acres in size located north of Maple Valley adjacent to and east of the Cedar River pipeline easement and Southeast Petrovitsky Road.
4. The site subject to the rezone request is the only property in this neighborhood west of the Cedar River that is currently zoned RA 10. All other parcels west of the river are currently zoned RA 5. The RA 10 zone continues east of the river to also encompass a private park owned by the Royal Arch Masons. The Applicant purchased his property from the Royal Arch Masons in 1996 and contends that the only reason the property was ever zoned RA 10 was to enable the Masons to minimize their tax obligation.

Other nearby properties bordering the Cedar River both north and south of the Applicant's site have been previously subdivided and developed as smaller residential parcels. As one moves west away from the river the incidence of larger acreage parcels increases, with 10 and 20 acre holdings not being uncommon. The analysis within the staff report concludes that "the platting pattern in the neighborhood consists of parcels ranging from 20 acres down to one acre, with a majority of the parcels being two acres in size." As documented within the staff report, prior to the adoption of the 1994 King County Comprehensive Plan zoning in this area was predominantly for 2.5 acre development.

5. A case can be made, however, for the imposition of lower density zoning in this specific location on the basis of sensitive area constraints. The northern half of the property contains the confluence of Peterson Creek and the Cedar River, with both stream channels bounded by steep slopes deeply incised into the upland plateau at an elevation drop of 250 to 300 feet. These steep channel walls decline at about a 50% slope and are also mapped as landslide and erosion hazards. The portions of the site lying at the level of the valley floor are included either within the streams and their buffers or within the 100-year flood plain for the Cedar River. Thus, within the nearly 30 acres currently zoned RA 10 on the site, probably no more than seven acres lie outside of sensitive areas and are suitable for development.
6. The site also possesses significant wildlife habitat, but because the upland plateau has been frequently logged and is also impacted by roadway and utility development, the primary environmental values lie along the streams and the adjacent steep slopes rising from the valley floor. Both the Cedar River and Peterson Creek provide viable salmon habitat, and this section of the river is a winter feeding ground for bald eagles. But for any development scenario the steep slopes and the stream channels will remain in sensitive areas protection, while the steepness and height of the slope will deter foot traffic from upland areas from entering the valley.

Accordingly, upland residential development on the Applicant's site should not adversely impact slope and stream channel habitat values, and the addition of a few more residential lots on the upland plateau should have minimal environmental consequences.

7. From a residential development standpoint, the primary site amenities are the territorial views to the east and north from the cliff edge. Consequently, an increase in density on the 50-acre site will probably result in cluster development focused on the northeast portion of the upland plateau. Granting the rezone will increase the total upland development potential from six to nine lots. The Applicant has provided a conceptual site design that shows such lots clustered toward the northeast corner on parcels ranging from about 3/4 of an acre to 1-1/2 acres. The Applicant's recently completed geotechnical study found the upland plateau to be comprised almost entirely of dense till, thus suggesting relatively stable soil conditions. But hydraulic forces from the river system will continue to produce slope steepening and undercutting, and the process of slope retreat must be regarded as an ongoing one. Even so, the geotechnical report predicts that retention of a natural 75-foot buffer back from the top of the slope should provide adequate protection to proposed development so long as site runoff is directed away from the slopes. The impermeability of the till soils also suggests that infiltration of site runoff is not likely to be an option. Water service to the property is available and sewage disposal by individual septic systems is considered feasible.
8. The RA 10 zoning currently on the site dates from 1995 when the new countywide zoning system implementing the Comprehensive Plan was adopted. Since that time the major change in the neighborhood has been the sale to the Applicant of the western portion of the Royal Arch Masons holding and the Applicant's efforts to convert the property from private park status into an economically profitable asset. In pursuit of this goal he has paid the back taxes necessary to remove the property from current use open space status and logged portions of the site under a Class 3 forest practice application with a county Conversion Option Harvest Plan.

#### CONCLUSIONS:

1. This record does not present a strong case for granting a rezone, as evidenced by the original staff recommendation to deny the application. Applying the standards set forth in Comprehensive Plan Policies R-205 and R-206, an argument can be made for imposition of either the five acre or ten acre minimum lot size designation. Policy R-205 states that the ten-acre designation is to be preferred in neighborhoods where the predominant lot size is ten acres or larger and the property is subject to significant environmental constraints. Policy R-206 supports a density of one home per five acres "where the land is physically suitable for development and can be supported by rural services" and the RA 10 criteria are not met.
2. With the employment of lot clustering, the residential density requested by the Applicant for the overall site can be accomplished on the upland unconstrained areas. Thus, the basic standard stated in Policy R-206 can be met, provided that the record does not compel a conclusion that the R-205 criteria are more clearly appropriate. With respect to these later criteria, while larger lots do exist in this neighborhood, ten acre or larger parcels do not predominate, and the nearly ubiquitous RA 5 zoning pattern over time will hasten the trend to smaller parcel sizes. In addition, while significant environmentally constrained areas exist on the site and need to be

adequately preserved, the height and steepness of the slopes provide major projection against invasive encroachment. Therefore, based on predominant zoning and development patterns, Policy R-206 would appear to be more suitable to the entire 50 acre site owned by the Applicant.

3. Approval of a rezone pursuant to KCC 20.24.190 also requires a demonstration that conditions or circumstances affecting the property have undergone substantial and material change not contemplated when the last area zoning was adopted. It also requires that these changed circumstances affect the subject property in a manner and degree different than other properties in the area. While Washington case law does not require a strong showing of substantial change, something more than simply the sale of the property and the resultant new subjective mindset of the property owner is necessitated.

The instant record demonstrates that the changed circumstances standard is met, if only barely. The material changes really do not comprise more than the actions of the Applicant, but in this instance such actions have entailed irreversible consequences and therefore can be accorded legal effect. The open space designation that previously characterized the site has been removed, and conversion from forestry to residential development has been achieved within the forest practices application. Finally, since the RA 10 designation currently on this parcel is anomalous with respect to surrounding zoning, these changed conditions affect this property differently than other parcels in the neighborhood.

4. In conclusion, the Applicant has both met the requirements of KCC 20.24.190 and demonstrated that Comprehensive Plan Policy R-206 contains the more appropriate policy standard for designation of his property, provided that the environmentally constrained areas do not render the site physically unsuitable for the development contemplated. Our principal concern is that with increased density the unconstrained upland area on the Applicant's eastern parcel may be too small for that parcel to develop independent of its companion to the west. In this regard, the Applicant has made no attempt to demonstrate the feasibility of development solely on that portion of the property to be rezoned from RA 10 to RA 5; rather his conceptual design and all supporting studies are based on analysis of the entire 50 acre property as a single development site. Accordingly, for a finding of public interest to be made with respect to this application, it will need to be subject to a pre-effective condition that a subdivision application be approved for the entire 50-acre site. If this requirement is met, the quantity of upland area on the western parcel will be sufficient to assure that an increase in density focused primarily on the eastern parcel will not result in development that is inconsistent with the public interest.
5. If conditioned in the manner provided below, the public necessity, convenience and general welfare will be served by the proposed reclassification.

#### RECOMMENDATION:

APPROVE the reclassification of the subject property to RA 5 in lieu of RA 10, subject to the following pre-effective condition:

Pre-effective Condition:

1. Subdivision of Tax Lots 09022069152 (Parcel A) and 09022069014 (Parcel B) shall be effected as a single integrated development encompassing both parcels.

ORDERED this 21st day of July, 1999.

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Stafford L. Smith, Deputy  
King County Hearing Examiner

TRANSMITTED this 21st day of July, 1999, to the following parties and interested persons:

Bellevue Regional Library  
Dave Bille  
Richard Bonewits  
Roger Dorstad  
Tim & Kelly Kahne  
John Kuzas  
Linda Matlock  
Eleanor Moon  
E Owens  
Jim Pirie

Ralph Roberts  
Nancy Bainbridge Rogers  
Terry Wilson  
Greg Borba  
Nick Gillen  
Michaelene Manion  
Vaughn Norris  
Jackie Reid  
Larry West

NOTICE OF RIGHT TO APPEAL REZONE RECOMMENDATION  
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before August 4, 1999**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before August 11, 1999**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

**MINUTES OF THE JULY 8, 1999, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L98RZ008 - KELLY KAHNE APPLICATION FOR ZONE RECLASSIFICATION.**

Stafford L. Smith was the Hearing Examiner in this matter. Participating at the hearing were Vaughn Norris, representing the County; Nancy Rogers, Kelly Kahne, Jim Pirie, and Richard Bonewits.

- Exhibit No. 1 Department of Development and Environmental Services File No. L98RZ008.
- Exhibit No. 2 Department of Development and Environmental Services Revised Preliminary Report, dated July 8, 1999.
- Exhibit No. 3 Application, dated November 24, 1998.
- Exhibit No. 4 Environmental Checklist, dated March 16, 1998.
- Exhibit No. 5 Declaration of Non-significance, dated January 13, 1999.
- Exhibit No. 6 Affidavit of Posting indicating January 14, 1999 as date of posting, and January 27, 1999 as the date the affidavit was received by the Department of Development and Environmental Services.
- Exhibit No. 7 Site Plan, dated November 20, 1998.
- Exhibit No. 8 Land Use Map 668W (Kroll Map)
- Exhibit No. 9 Assessor's Maps: SW S4-T22-R6 and NW & NE S9-T22-R6.
- Exhibit No 10 King County Zoning Atlas (Sheet 21)
- Exhibit No. 11 King County Comprehensive Plan Land Use Map (Sheet 21)
- Exhibit No. 12 Level One Storm Drainage Analysis, dated February 11, 1998

The following exhibit was entered pursuant to administrative continuance:

- Exhibit No. 13 Transmittal letter dated June 25, 1999, from Jeffrey M. Johnson (Geotech Consultants) to James Pirie with attached Preliminary Geotechnical Engineering Study